

Overview of California Toxics Rule (CTR)

Promulgated May 18, 2000 to fill a gap in CA's water quality standards. Gap created in 1994 when a state court overturned CA's water quality criteria for priority toxic pollutants for inland surface waters & enclosed bays and estuaries. The CTR promulgated aquatic life criteria for 23 pollutants and human health criteria for 57 pollutants.

Completion	Event
8/97	EPA proposes CTR.
10/97	EPA sends Biological Evaluation to the Services.
4/98	Services send draft jeopardy Biological Opinion (BO) to EPA.
12/99	EPA sends letter to Services outlining proposed modifications to CTR to mitigate draft jeopardy BO. (Modifications negotiated w/Services.)
3/00	Services issue final BO with incidental take statement and RPMs with terms and conditions that reflect proposed modifications in 12/99 letter.
5/00	EPA promulgates final CTR.

Current EPA following through on all terms and conditions.

Summary/Status of Major Terms & Conditions:

Constituent	Summary of Term and Condition	Status
Selenium	EPA will revise its national aquatic life criteria & promulgate for CA; new criteria to protect Federally-listed species.	EPA developed draft revised national criteria in 4/03; Services objected to revised values as wholly unprotective. EPA intends to develop & promulgate CA-specific wildlife selenium criteria per 9/02 Se Forum.
Mercury	EPA will revise its national human health criteria & promulgate for CA; new criteria to protect Federally-listed species.	EPA revised its national human health criterion 1/01 (fish tissue criterion for methyl mercury). EPA intends to promulgate revised criterion for CA. Biological Evaluation well underway; appears criterion does not protect Federally-listed least tern & clapper rails.
Cadmium	EPA will revise its national aquatic life criteria & promulgate for CA; new criteria to protect Federally-listed species.	EPA revised its national aquatic life criteria 4/01. EPA intends to promulgate revised aquatic life criteria for CA; criteria fall within Services' prescribed range precluding further ESA consultation.
PCP	EPA will review, and if necessary, revise its national chronic aquatic life criterion & promulgate for CA; new criteria to protect Federally-listed species. (Re: Temperature & DO.)	HQ: EPA prepared letter discussing Services' concerns; letter supports current criteria as protective. HQ needs to send Services letter & supporting documentation.
Site-Specific Criteria for T&E Species	Initiate development of national methodology to derive site-specific criteria for Federally listed species, including wildlife.	HQ: FWS scientists included on EPA team to revise aquatic life methodology; project to take multiple years to complete.
Sediment Guidelines	Benchmarks: Cu, Cd, Pb, Ni, Zn, Ag and Cr.	HQ: Nearly completed (Cr outstanding).
Biotic Ligand Model	Publish BLM for metals.	HQ: Nearly completed.
WER Guidance	Issue clarification on 1) whether Ca/Mg ratio affects toxicity, 2) proper acclimation of test organisms, and 3) WERs be used only when site-specific & lab LC ₅₀ significantly differ.	HQ: EPA prepared draft report addressing all issues. Peer review on Ca/Mg issues was mixed. Current internal discussion on whether/how to modify WER guidance.

CTR2: Methyl Mercury and Cadmium Rule: HQ Proposed Schedule:

ACTIVITY:	START DATE:	FINISH DATE:
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Technical Assistance from Services	Sep 15, 2003	Dec 31, 2003
Economic Analysis	Oct 1, 2003	Dec 31, 2003
Workgroup Closure (with OPEI participation)		Jan 31, 2004
OST Transmittal to AA	Feb 1, 2004	Feb 28, 2004
OPEI/AA/A Transmittal to OMB	Mar 1, 2004	Mar 31, 2004
OMB Review (90 days for OMB to complete its review may be optimistic.)	Apr 1, 2004	Jun 30, 2004
Administrator Signature on Proposed Rule	Jul 1, 2004	Jul 31, 2004
Public Comment	Aug 1, 2004	Sep 30, 2004
Respond to Public Comment	Oct 1, 2004	Dec 31, 2004
Biological Evaluation	Jan 1, 2004	Dec 31, 2005
Biological Opinion	Jan 1, 2005	Jun 30, 2005
Workgroup Closure (with OPEI participation)	Jul 1, 2005	Jul 31, 2005
OST Transmittal to AA	Aug 1, 2005	Aug 31, 2005
OPEI/AA/A Transmittal to OMB	Sep 1, 2005	Oct 15, 2005
Administrator Signature on Final Rule	Oct 15, 2005	Nov 15, 2005

Mercury Issues:

1) Draft Preamble & Rule: Draft language is completed; final edits must be incorporated. The preamble is missing discussions on Implementation, the Economic Analysis, and the ESA consultation (see each below).

2) Implementation: When EPA noticed its revised human health water quality criterion (in fish tissue values) in January of 2001, it stated that implementation guidance would follow. HQ and Regional staff have been working since 2001 to develop draft guidance. A final draft was completed this spring. HQ staff are trying to obtain HQ management approval to release the draft document to the Regions for comment, and then the public. Chapters include how to use a water quality standard in fish tissue as a basis for water quality-based effluent limits in NPDES permits (the most controversial chapter).

3) Economic Analysis: The State of CA funded the collection of mercury data for corresponding SIP amendments (CA specific MeHg implementation guidance). Data gathering was completed this past spring. EPA will use this data to develop the EA. EPA will start the EA analysis in October. Delays have occurred due to contractor resources being diverted to higher priority projects (ones with Court ordered deadlines; we are currently waiting for completion of the Oregon temperature EA). Delay has also occurred due to the lack of draft MeHg Implementation Guidance.

4) ESA Consultation: Informal ESA consultation was initiated in 2001. R9 funded an IAG with FWS Sacramento for the development of a Biological Evaluation analyses of methyl mercury on CA T&E species. As part of this IAG, R9 and FWS Sacramento participated on a national workgroup to develop a methodology to evaluate water quality criteria for bioaccumulative pollutants in the national water quality standards ESA consultation. The workgroup consists of EPA and FWS mercury experts. As a pilot project, the group applied the methodology to develop the CA MeHg Biological Evaluation analyses. The final report is to be delivered to R9 in September.. Two analyses were conducted: one using the 0.3 mg/kg fish tissue criterion applied to trophic level 4 fish; and one using the criterion applied to national default human health consumption patterns of trophic level 2, 3, and 4 fish (a less protective scenario). Initial drafts indicate that the least tern, the Yuma clapper rail, and the Light-Footed clapper rail will not be protected, even under the more stringent scenario. We propose to have the document peer reviewed, as a next step. We also propose to send the document back to FWS for "technical assistance." In response, FWS will tell EPA which species will be jeopardized under each scenario.

CTR 3: Selenium Rule: HQ Proposed Schedule:

Recent Issues:

1. April 2002: EPA sent out its draft revised 304(a) criteria guidance document for peer review. Services requested EPA to postpone publication of guidance and re-conduct the revision to consider wildlife. Services stated that revised criteria did not protect CA T&E species.
2. September 2002: Selenium Forum: EPA and the Services agreed, instead, to develop California-specific selenium water quality criteria for wildlife. An Interagency Workgroup will develop draft wildlife criteria values, which will undergo an external technical Peer Review. EPA would amend the CTR, by promulgating the revised criteria values.
3. EPA and the Services agreed to use USGS as a neutral federal agency to do the bulk of the technical analysis, and that EPA HQ would help fund the USGS work via an IAG. To date, work has not started due to lack of funding.

ACTIVITY:	START:	COMPLETION:
Brief Senior Managers and Request Level of Resource Commitment		Dec, 2003
Interagency Workgroup will develop draft wildlife criteria values	Jan, 2003	Dec, 2004
External Peer Review	Jan, 2005	Mar, 2005
Revise criteria per comments	Apr, 2005	Sept, 2005
Economic Analysis	Apr, 2005	Sept, 2005
Proposed amendment to the CTR	Sept, 2004	Dec, 2006